

AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 8
OFFERED BY MR. POMEROY

Strike all after the enacting clause and insert the following:

1 SECTION 1. RESTORATION OF ESTATE TAX; REPEAL OF
2 CARRYOVER BASIS.

3 (a) IN GENERAL.—Subtitles A and E of title V of
4 the Economic Growth and Tax Relief Reconciliation Act
5 of 2001, and the amendments made by such subtitles, are
6 hereby repealed; and the Internal Revenue Code of 1986
7 shall be applied as if such subtitles, and amendments, had
8 never been enacted.

9 (b) SUNSET NOT TO APPLY.—

10 (1) Subsection (a) of section 901 of the Eco-
11 nomic Growth and Tax Relief Reconciliation Act of
12 2001 is amended by striking “this Act” and all that
13 follows and inserting “this Act (other than title V)
14 shall not apply to taxable, plan, or limitation years
15 beginning after December 31, 2010.”.

16 (2) Subsection (b) of such section 901 is
17 amended by striking “, estates, gifts, and transfers”.

18 (c) CONFORMING AMENDMENTS.—Subsections (d)
19 and (e) of section 511 of the Economic Growth and Tax
20 Relief Reconciliation Act of 2001, and the amendments



1 made by such subsections, are hereby repealed; and the
 2 Internal Revenue Code of 1986 shall be applied as if such
 3 subsections, and amendments, had never been enacted.

4 **SEC. 2. MODIFICATIONS TO ESTATE TAX.**

5 (a) INCREASE IN EXCLUSION EQUIVALENT OF UNI-
 6 FIED CREDIT TO \$3,000,000.—Subsection (c) of section
 7 2010 of the Internal Revenue Code of 1986 (relating to
 8 applicable credit amount) is amended by striking all that
 9 follows “the applicable exclusion amount” and inserting
 10 “. For purposes of the preceding sentence, the applicable
 11 exclusion amount is \$3,000,000.”.

12 (b) MAXIMUM ESTATE TAX RATE TO REMAIN AT 49
 13 PERCENT; RESTORATION OF PHASEOUT OF GRADUATED
 14 RATES AND UNIFIED CREDIT.—

15 (1) Paragraph (1) of section 2001(c) of such
 16 Code is amended by striking the last 2 items in the
 17 table and inserting the following new item:

“Over \$2,000,000	\$780,800, plus 49% of the excess over \$2,000,000.”.
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18 (2) Paragraph (2) of section 2001(c) of such
 19 Code is amended to read as follows:

20 “(2) PHASEOUT OF GRADUATED RATES AND
 21 UNIFIED CREDIT.—The tentative tax determined
 22 under paragraph (1) shall be increased by an
 23 amount equal to 5 percent of so much of the amount
 24 (with respect to which the tentative tax is to be com-



1 puted) as exceeds \$10,000,000. The amount of the
2 increase under the preceding sentence shall not ex-
3 ceed the sum of the applicable credit amount under
4 section 2010(c) and \$199,200.”

5 (c) EFFECTIVE DATE.—The amendments made by
6 this section shall apply to estates of decedents dying, and
7 gifts made, after December 31, 2003.

8 **SEC. 3. VALUATION RULES FOR CERTAIN TRANSFERS OF**
9 **NONBUSINESS ASSETS; LIMITATION ON MI-**
10 **NORITY DISCOUNTS.**

11 (a) IN GENERAL.—Section 2031 of the Internal Rev-
12 enue Code of 1986 (relating to definition of gross estate)
13 is amended by redesignating subsection (d) as subsection
14 (f) and by inserting after subsection (c) the following new
15 subsections:

16 “(d) VALUATION RULES FOR CERTAIN TRANSFERS
17 OF NONBUSINESS ASSETS.—For purposes of this chapter
18 and chapter 12—

19 “(1) IN GENERAL.—In the case of the transfer
20 of any interest in an entity other than an interest
21 which is actively traded (within the meaning of sec-
22 tion 1092)—

23 “(A) the value of any nonbusiness assets
24 held by the entity shall be determined as if the
25 transferor had transferred such assets directly



1 to the transferee (and no valuation discount
2 shall be allowed with respect to such nonbusi-
3 ness assets), and

4 “(B) the nonbusiness assets shall not be
5 taken into account in determining the value of
6 the interest in the entity.

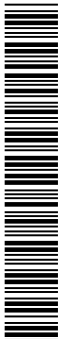
7 “(2) NONBUSINESS ASSETS.—For purposes of
8 this subsection—

9 “(A) IN GENERAL.—The term ‘nonbusi-
10 ness asset’ means any asset which is not used
11 in the active conduct of 1 or more trades or
12 businesses.

13 “(B) EXCEPTION FOR CERTAIN PASSIVE
14 ASSETS.—Except as provided in subparagraph
15 (C), a passive asset shall not be treated for pur-
16 poses of subparagraph (A) as used in the active
17 conduct of a trade or business unless—

18 “(i) the asset is property described in
19 paragraph (1) or (4) of section 1221(a) or
20 is a hedge with respect to such property,
21 or

22 “(ii) the asset is real property used in
23 the active conduct of 1 or more real prop-
24 erty trades or businesses (within the mean-
25 ing of section 469(c)(7)(C)) in which the



1 transferor materially participates and with
2 respect to which the transferor meets the
3 requirements of section 469(c)(7)(B)(ii).

4 For purposes of clause (ii), material participa-
5 tion shall be determined under the rules of sec-
6 tion 469(h), except that section 469(h)(3) shall
7 be applied without regard to the limitation to
8 farming activity.

9 “(C) EXCEPTION FOR WORKING CAP-
10 ITAL.—Any asset (including a passive asset)
11 which is held as a part of the reasonably re-
12 quired working capital needs of a trade or busi-
13 ness shall be treated as used in the active con-
14 duct of a trade or business.

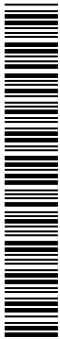
15 “(3) PASSIVE ASSET.—For purposes of this
16 subsection, the term ‘passive asset’ means any—

17 “(A) cash or cash equivalents,

18 “(B) except to the extent provided by the
19 Secretary, stock in a corporation or any other
20 equity, profits, or capital interest in any entity,

21 “(C) evidence of indebtedness, option, for-
22 ward or futures contract, notional principal con-
23 tract, or derivative,

24 “(D) asset described in clause (iii), (iv), or
25 (v) of section 351(e)(1)(B),



1 “(E) annuity,

2 “(F) real property used in 1 or more real
3 property trades or businesses (as defined in sec-
4 tion 469(c)(7)(C)),

5 “(G) asset (other than a patent, trade-
6 mark, or copyright) which produces royalty in-
7 come,

8 “(H) commodity,

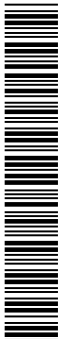
9 “(I) collectible (within the meaning of sec-
10 tion 401(m)), or

11 “(J) any other asset specified in regula-
12 tions prescribed by the Secretary.

13 “(4) LOOK-THRU RULES.—

14 “(A) IN GENERAL.—If a nonbusiness asset
15 of an entity consists of a 10-percent interest in
16 any other entity, this subsection shall be ap-
17 plied by disregarding the 10-percent interest
18 and by treating the entity as holding directly its
19 ratable share of the assets of the other entity.
20 This subparagraph shall be applied successively
21 to any 10-percent interest of such other entity
22 in any other entity.

23 “(B) 10-PERCENT INTEREST.—The term
24 ‘10-percent interest’ means—



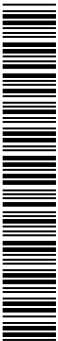
1 “(i) in the case of an interest in a cor-
2 poration, ownership of at least 10 percent
3 (by vote or value) of the stock in such cor-
4 poration,

5 “(ii) in the case of an interest in a
6 partnership, ownership of at least 10 per-
7 cent of the capital or profits interest in the
8 partnership, and

9 “(iii) in any other case, ownership of
10 at least 10 percent of the beneficial inter-
11 ests in the entity.

12 “(5) COORDINATION WITH SUBSECTION (b).—
13 Subsection (b) shall apply after the application of
14 this subsection.

15 “(e) LIMITATION ON MINORITY DISCOUNTS.—For
16 purposes of this chapter and chapter 12, in the case of
17 the transfer of any interest in an entity other than an in-
18 terest which is actively traded (within the meaning of sec-
19 tion 1092), no discount shall be allowed by reason of the
20 fact that the transferee does not have control of such enti-
21 ty if the transferee and members of the family (as defined
22 in section 2032A(e)(2)) of the transferee have control of
23 such entity.”



1 (b) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to transfers after the date of the
3 enactment of this Act.

Amend the title so as to read: “A bill to amend the
Internal Revenue Code of 1986 to restore the estate tax,
to limit its applicability to estates of over \$3,000,000,
and for other purposes.”

